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9 UNITED STATES DISTRICT COURT  
 10 DISTRICT OF ARIZONA

11	The United States of America,	)	
12		)	CV-10-01413-PHX-SRB
13	Plaintiff,	)	
14		)	
15	v.	)	
16		)	<b>MOTION FOR LEAVE TO FILE</b>
17	The State of Arizona; and Janice K.	)	<b>BRIEF OF <i>AMICI CURIAE</i></b>
18	Brewer, Governor of the State of	)	<b>WASHINGTON LEGAL</b>
19	Arizona, in her Official Capacity,	)	<b>FOUNDATION, <i>ET AL.</i></b>
20		)	
21	Defendants.	)	
22		)	

23 The Washington Legal Foundation; Arizona State Representative John Kavanagh; U.S.  
 24 Representatives Lynn Jenkins (KS), Tom McClintock (CA), Gary Miller (CA), and  
 25 Lamar Smith (TX); Allied Educational Foundation; and the National Border Patrol Council  
 26 hereby move for leave to file the concurrently lodged brief as *amici curiae* in opposition  
 to Plaintiffs’ Motion for Preliminary Injunction (Dkt. 27). In support of their motion,  
*amici* state as follows:

(1) The Washington Legal Foundation (WLF) is a nonprofit, public interest law  
 and policy center with supporters in all fifty states, including many in Arizona. WLF

1 devotes a substantial portion of its resources to promoting the robust enforcement of state  
2 and federal laws designed to curb illegal immigration. WLF has appeared in courts  
3 across the country to ensure that governments at all levels possess the legal resources  
4 necessary to combat illegal immigration. *See, e.g., Kucana v. Holder*, 130 S. Ct. 827  
5 (2010); *Nken v. Holder*, 129 S. Ct. 1749 (2009); *Gonzalez v. State of Arizona*, 486 F.3d  
6 1041 (9th Cir. 2007); *Friendly House v. Napolitano*, 419 F.3d 930 (9th Cir. 2005). WLF  
7 has also opposed efforts by federal courts to exercise jurisdiction over immigration  
8 matters that are properly the prerogative of the elected branches of government. *See, e.g.,*  
9 *Clark v. Martinez*, 543 U.S. 371 (2005); *Demore v. Kim*, 538 U.S. 510 (2003); *INS v. St.*  
10 *Cyr*, 533 U.S. 289 (2001); *Reno v. American-Arab Anti-Discrimination Comm.*  
11 *(“AAADC”)*, 525 U.S. 471 (1999).

15 (2) Arizona State Representative John Kavanagh, who represents Arizona’s 8th  
16 State House district, was the principal sponsor of SB 1070 in the Arizona State House.

17 (3) U.S. Rep. Lynn Jenkins represents Kansas’s 2nd congressional district and  
18 serves on the Financial Services Committee. U.S. Rep. Tom McClintock represents  
19 California’s 4th congressional district and serves on both the Education and Labor  
20 Committee and the Natural Resources Committee. U.S. Rep. Gary Miller represents  
21 California’s 42nd congressional district and serves on the Financial Services and  
22 Transportation and Infrastructure Committee. U.S. Rep. Lamar Smith (Texas) is the  
23 former Chairman of the Immigration and Claims Subcommittee and currently the ranking  
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25  
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1 member of the Judiciary Committee. All believe that Congress has never sought to bar  
2 State and local governments from adopting immigration-related enforcement legislation.

3  
4 (4) The Allied Educational Foundation (AEF) is a non-profit charitable  
5 foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to  
6 promoting education in diverse areas of study, such as law and public policy, and has  
7 appeared as *amicus curiae* in this Court on a number of occasions.

8  
9 (5) The National Border Patrol Council (NBPC) is a professional labor union  
10 representing more than 17,000 front-line Border Patrol Agents and support staff. Since  
11 its founding in 1967, the NBPC has demonstrated an unwavering commitment to  
12 protecting America's borders.

13  
14 (6) While *amici* agree with Defendants that the United States has failed to  
15 demonstrate any likelihood of success on the merits, *amici* seek to file separately to focus  
16 on the United States's claim that SB 1070's employment provision, the first portion of § 5  
17 of SB 1070, conflicts with – and thus is impliedly preempted by – federal immigration  
18 policy. Contrary to Plaintiff's claim, § 5 of SB 1070 is designed to assist with  
19 implementation of the immigration policies established by Congress, and nothing in the  
20 legislation stands as an obstacle to the accomplishment and execution of the full purposes  
21 and objectives of Congress.

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23  
24 (7) *Amici* are particularly concerned that the United States's preemption claim  
25 ignores the fact that it is the clear policy of the United States that those who are not  
26

1 authorized to be present in the United States should not seek or undertake employment in  
2 this country. Section 5 of SB 1070, by criminalizing the solicitation and/or performance  
3 of employment by such individuals, directly advances that policy. Moreover, the United  
4 States's motion is deficient in that it fails to bring t the Court's attention binding  
5 precedent that directly contradicts the position it asserts. Indeed, the federal  
6 government's position regarding the preemption of state law is contrary to the position it  
7 has espoused in other settings.  
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10 (8) *Amici* seek to file their brief because of their demonstrated interest in  
11 curbing illegal immigration; they have no direct financial interest in the outcome of this  
12 lawsuit. Because of their lack of direct interests, *amici* believe that they can assist the  
13 Court by providing a perspective that is distinct from that of any party.  
14

15 (9) Counsel for *amici* contacted counsel for the United States and counsel for  
16 the Defendants in an effort to obtain consent for leave to file the concurrently lodged  
17 *amicus curiae* brief. Counsel for Defendants consented to the proposed filing by *amici*.  
18 Counsel for the United States stated that the United States takes "no position" on the  
19 proposed filing by *amici*.  
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21 WHEREFORE, *amici* respectfully request that this motion for leave to file the  
22 concurrently lodged *amicus curiae* brief be granted. A proposed order is attached.  
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Respectfully submitted,

/s/ David T. Hardy  
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Counsel for *Amici Curiae*

Dated: July 20, 2010

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 20th day of July, 2010, I electronically filed the  
3 foregoing document with the Clerk of the Court for the U.S. District Court for the District  
4 of Arizona by using CM/ECF system. I certify that all participants in the case are  
5 represented by counsel of record who are registered CM/ECF users and that service will  
6 be accomplished by the CM/ECF system.  
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10 /s/ David T. Hardy

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